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No. 307

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# Supreme Court of the United States.

OCTOBER TERM, 1945.

RICHARD T. GREEN COMPANY, M. THOMAS  
GREEN, TRUSTEE OF M. THOMAS GREEN  
TRUST, AND THE FIRST NATIONAL BANK OF  
BOSTON,

*Petitioners,*

*v.*

CITY OF CHELSEA,  
*Respondent.*

PETITION FOR WRIT OF CERTIORARI  
AND  
BRIEF IN SUPPORT THEREOF.

SAMUEL HOAR,  
GEORGE K. GARDNER,  
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*v.*

CITY OF CHELSEA,

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## PETITION FOR WRIT OF CERTIORARI.

*To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

Your petitioners respectfully submit their petition for a writ of certiorari to review the decision of the Circuit Court of Appeals for the First Circuit in the above-entitled case, numbered 4055 in the October 1944 Term of said Court.

### **Summary Statement of the Matter Involved.**

This proceeding began with a taking by the United States of America (Rec. pp. 1-15) of the petitioners' property (Rec. pp. 16-18) consisting of about five acres of land

on the Chelsea waterfront in Boston Harbor as shown on a "Plan of the Richard T. Green Shipyard Property Plant No. 2" (Rec. p. 11). Compensation was fixed at \$320,000, of which \$180,000 was distributed to the petitioners and \$140,000 retained in the registry of the District Court to cover \$140,000 of taxes which the City of Chelsea had assessed on the property before the taking and which had not been paid (Rec. pp. 28-34).

The City of Chelsea claimed to have a lien and tax title on the land to secure these taxes (Rec. p. 24), which the petitioners denied (Rec. pp. 25-28). Upon this issue the District Court made a decree for the City of Chelsea (Rec. pp. 104-105), which the Circuit Court of Appeals affirmed on appeal (Rec. pp. 123-134).

The grounds of the petitioners' appeal from the District Court's decree are numerous (Rec. pp. 113-114); but only one of them is urged here. That ground is (1) that the "Marine Railway" shown on the Plan of the land taken (Rec. p. 11) consisted of a foundation, a track structure, a cradle, and hoisting machinery (Rec. pp. 81-82; 127-128); (2) that by far the greater part of the taxes in controversy were assessed on the foundation, the track structure, the cradle, the hoisting machinery, and the parcel of land on which they were located, valued and assessed as a single unit of real estate (Rec. pp. 79-84); (3) that by the law of Massachusetts the cradle and hoisting machinery were personal property and could only be taxed as such (Rec. p. 73, Requests 15, 16, 19); that "the laws of Massachusetts at all times material to the issues required the assessors of Chelsea to place separate and distinct valuations on the [petitioners'] real estate and personal property and to assess separate and distinct taxes thereon" (Rec. p. 71, Request 4); and (5) that "the laws of Massachusetts at all times material to the issues were such that a single tax

assessed upon real and personal estate belonging to the same owner created no lien upon the real estate" (Rec. p. 72, Request 11).

As will be seen from the record references, Propositions (1) and (2) of this chain of argument are taken from the District Court's findings, which were not disputed and which were adopted by the Circuit Court of Appeals. Propositions (4) and (5) were rulings of law which the petitioners asked for (Rec. pp. 71, 72, Requests 4, 11), which the District Court granted (Rec. p. 79) and which the Circuit Court of Appeals did not deny. Both the Circuit Court of Appeals (Rec. pp. 128-131) and the District Court (Rec. pp. 94-96) rested their decisions on the proposition that the cradle and hoisting machinery were properly taxed as real estate. Whether their decisions on this point were in accord with the law of Massachusetts is thus the only question now raised.

After the Circuit Court of Appeals had rendered its judgment the petitioners filed a petition for rehearing (Rec. pp. 135-153) setting up the following facts: The petitioner Richard T. Green Company owns another marine railway in Chelsea possessing physical characteristics which cannot be distinguished from those of the marine railway in this case (Rec. pp. 139-141). On April 9 to 12, 1945 (Rec. p. 136)—after the case in the Circuit Court of Appeals had been argued (Rec. p. 122)—there was tried in the Land Court of Massachusetts an action between the same parties in which the sole issue was the same as that now urged in this petition, *i.e.*, whether taxes assessed by Chelsea on this other marine railway, including the cradle and hoisting machinery, as a single parcel of real estate created any valid tax lien (Rec. pp. 136-142). At the trial of that action the Land Court of Massachusetts admitted testimony of assessors of other Massachu-

setts municipalities that it was not their custom to assess the cradles and hoisting machinery of marine railways as real estate (Rec. pp. 143-148). The petition for rehearing prayed (Rec. p. 153):

*"First*, that a re-hearing be granted to be held after the final determination of the above-mentioned Land Court proceedings either by a judgment of the Land Court not appealed from or by a decision of the Supreme Judicial Court on appeal; *Second*, that upon such final determination this Court dispose of the petitioners' appeal to this Court in accordance with the Massachusetts law thereby established."

The petition for rehearing was denied on June 27, 1945.

We must here inform the Court of three facts which do not appear in the record, namely: That after June 15, 1945, when the petitioners filed their petition for rehearing (Rec. p. 134), and before June 27, 1945, when the Circuit Court of Appeals denied it (Rec. p. 154), (1) the Land Court decided the action referred to in the petition for rehearing in favor of the City of Chelsea, (2) the petitioners appealed to the Supreme Judicial Court from the Land Court's decision, and (3) the Circuit Court of Appeals was informed by counsel both of the Land Court's decision and of the petitioners' appeal.

#### **Statement of This Court's Jurisdiction.**

This Court has jurisdiction to review the judgment of the Circuit Court of Appeals by certiorari under section 240 of the Judicial Code; United States Code, title 28, chapter 9, section 347.

### **The Question Presented.**

The question presented is whether the Circuit Court of Appeals ought to have granted the petitioners' prayer for a rehearing "to be held after the final determination of the above-mentioned Land Court proceedings either by a judgment of the Land Court not appealed from or by a decision of the Supreme Judicial Court on appeal."

Inasmuch as the record does not disclose any judgment at all of the Land Court, and inasmuch as there has not been in fact any "judgment of the Land Court not appealed from," it is plain that the petitioners have not had the rehearing for which they prayed.

### **Reasons Relied on for Allowance of the Writ.**

The petitioners submit—

1. That the Circuit Court of Appeals has decided an important question of Massachusetts law in a way probably in conflict with applicable local decisions in that it has held the cradle and hoisting machinery to be taxable as real estate.
2. That this precise question of Massachusetts law is now in course of being finally determined by the Supreme Judicial Court of Massachusetts in a suit now pending between the very parties to this petition; and that it would be a grave injustice to the petitioners and a grave scandal to the administration of justice if the present case were disposed of in a manner contrary to the final disposition of the other case pending between the same parties in the State court.
3. That the allowance of the writ under these circumstances is sustained in principle by the decisions of this Court, and particularly by *Huddleston v. Dwyer*, 322 U.S. 232.

A brief in support of these propositions is hereto annexed.

WHEREFORE your petitioners respectfully pray—

1. That a writ of certiorari issue out of and under the seal of this Honorable Court to review the decision of the Circuit Court of Appeals for the First Circuit in the above case.
2. That the judgment of the Circuit Court of Appeals for the First Circuit in the above case be vacated.
3. That the Circuit Court of Appeals for the First Circuit be directed to grant the First and Second prayers of the petitioners' petition for rehearing (Rec. p. 153), namely: *First*, that a rehearing be granted to be held after the final determination of the case entitled *City of Chelsea, Petitioner, v. Richard T. Green Co. et al., Respondents*, No. 17653 T.L. in the Land Court of Massachusetts, either by a judgment of the Land Court not appealed from or by a decision of the Supreme Judicial Court on appeal; *Second*, that upon such final determination the Circuit Court of Appeals dispose of the petitioners' appeal in accordance with the Massachusetts law thereby established.
4. For such other and further relief in the premises as to this Honorable Court may seem proper.

RICHARD T. GREEN COMPANY,  
M. THOMAS GREEN, TRUSTEE OF  
M. THOMAS GREEN TRUST,  
FIRST NATIONAL BANK OF BOSTON,  
*Petitioners.*

SAMUEL HOAR,  
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